(2)

Supreme Court, U.S.
FILED
MAY 25 2004
OFFICE OF THE CLERK

No. 03-1242

In The

Supreme Court of the United States

In re DIANE L. HOLBROOK,

Petitioner.

On Petition For An Extraordinary Writ Of Mandamus/Writ Of Prohibition To The United States Court Of Appeals For The Eleventh Circuit To The District Court Of Appeal Of The State Of Florida Fourth District To The Circuit Court Of Fauquier County Of The State Of Virginia

PETITION FOR REHEARING

DIANE L. HOLBROOK
Petitioner
Post Office Box 1512
Hobe Sound, Florida 33475-1512
Telephone: (772) 545-9793

QUESTIONS PRESENTED FOR REVIEW

1. Whether the U.S. COA Eleventh Circuit and U.S. District Court misinterpret, pertaining to "Allied Van Lines, Inc." jurisdiction issues, for allegedly violating the Florida Unfair And Deceptive Trade Practices Act by acquisition theoretical authority so broadly thereby diminishing the sovereign territory of the State of Florida without its consent.

2. Whether the Fourth District COA Of Florida erred in a decision that conflicts with another (same Court) Fourth District COA Of Florida decision in *LEHNER v. DURSO*, 816 So.2d 1171 in 2002 (only a year earlier) to prevent further intracircuiting confusion and inequity.

3. Whether Alan Clayton Espy, Esquire and Clerk of the Court and/or Judge William L. Roby are chargeable with abuses of judicial powers guilty of malfeasance and/or nonfeasance OR were their actions an inadvertence, surprise, or excusable neglect.

4. Whether Lowry Jock Miller, Esquire and Clerk of the Court and/or retired Judge William Shore Robertson, etc. chargeable for alleged fraud, conflict of interest, or other misconduct(s) and with abuses of judicial powers guilty of malfeasance and/or nonfeasance.

5. Whether Raoul C. Cantero, III, Esquire and retired U.S. District Chief Judge Edward B. Davis/U.S. Magistrate Judge Frank J. Lynch, Jr. and/or Clerk of the Court chargeable with abuses of judicial powers for conflict of interest(s) and other misconducts and guilty of malfeasance and/or nonfeasance OR whether the Clerk of the Court was the primary problem of Court clerical mistakes arising *from oversight on records not being corrected for over five years now.*

PETITION FOR REHEARING

Petitioner, Diane L. Holbrook respectfully requests that this Court grant the Petition For Rehearing seeking review of the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition vacating denied and then be Granted and Certiorari(s) with Rehearing(s) vacating denied and then be Granted. Pursuant to Rule 44 of this Court's Rules, this Petition has been filed within 25 days of the denial of the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition.

REASONS FOR GRANTING THE REHEARING

Three of the four waiver(s) Respondent(s) signed checked box indicating "There are multiple respondents, and I do not represent all respondents." Rehearing will break down isolated text with appropriate respondents.

Previously, Allied Van Lines, Inc., a foreign corporation. Petitioner's Petition For Rehearing regarded to issues involving case(s) of first impression because it *appeared* to present an entirely novel question of law that was never before considered by any court questioning jurisdiction. However, Petitioner came across a case law *Hudgins Moving & Storage Co., Inc., . . . , Plaintiff, v. American Express Company, and American Express Travel Related Services Company, Inc., Defendants*, 292 F. Supp. 2d 991 (November 19, 2003). Whereas, state Court was granted jurisdiction. "Finally, the district court found that federal preemption did not provide a ground for removal of the state law claims to the district court." Second reason, *see* The Kansas City Star, "Sixteen moving companies, 74 employees indicted in Miami," March 4, 2003, available at http://www.kansascity.com/mld/kansas city/business/5314607.htm?1c.

These are actions for quantum meruit/unjust enrichment, as an alternative count for merit(s). In the event Petitioner is not successful in prosecution of Breach of Contract and Fraud by misrepresented material facts, either intentionally and knowingly *or* innocently *or*

negligently, with the intent that the Court may rely on it, in case the Petitioner were to have no adequate remedy at law. The Respondents have been unjustly enriched due to the fact that it has benefited from prepaid in full, but has failed to render all that is prepaid for. The Respondents will therefore have gained a windfall unless relief is granted.

SUMMARY OF SEPARATED ISOLATED ARGUMENTS FOR RESPONDENTS

In the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition, Questions Presented part of 1 regarding Rules of Civil Procedure Rule 1.540(a), Rule 1.500(a) and Rule 1.500(e). All of Questions 2 and 3. Jurisdiction section. Statement of the Case paragraphs 1 and 2. Reasons For Granting The Writ paragraph 2. Appendix 1 thru 70. Conclusion. In this Petition for Rehearing content, Reasons for Granting the Rehearing paragraphs 1 and 3. These are, so far, the isolated arguments for the following Respondents:

1. Daniel F. Dill, Esquire ROGERS, COLEMAN, PENDAS, KNAPP & DILL, P.A.
2. Alan Clayton Espy, Esquire
3. Diran V. Seropian, Esquire
4. Elizabeth A. Metzger, Esquire/Edwin E. Mortell, III, Esquire/Michael Balducci, Esquire PETERSON, BERNARD, VANDENBERG, ZEI, GEISLER & MARTIN, P.A.
5. District Court of Appeal Fourth District of Florida Louis F. Hubener, Esquire

In the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition, Questions Presented in all of Case(s) No. 02-1613. Constitutional Provisions And Statutes Involved. Statement of the Case paragraph 3. Reasons for Granting The Writ paragraph 1. Appendix 71, 72, 75 thru 88. Conclusion. In this Petition for Rehearing content, Reasons for Granting the Rehearing paragraphs

1, 2 and 3. These are, so far, the isolated arguments for the following Respondents:

1. Gilda M. Chavez, Esquire DOMBROFF & GILMORE, P.C.
2. Clerk of Court, Court Administration, United States District Court
3. United States Court of Appeals Eleventh Circuit

In the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition, Questions Presented in all of Case(s) No. 01-31. Statement of the Case paragraphs 4, 5 and 7. Appendix 73, 74, 89 thru 137. Conclusion. In this Petition for Rehearing content, Reasons for Granting the Rehearing paragraphs 1 and 3. These are, so far, the isolated arguments for the following Respondents:

1. Miller, Kearney & Geschickter, LLP
2. Lowry Jock Miller, Esquire
3. Raoul G. Cantero, III, Esquire/Eric N. Assouline, Esquire/Natalie J. Carlos, Esquire ADORNO & ZEDER, P.A.
4. Clerk of Court, Court Administration, United States District Court
5. United States Court of Appeals Eleventh Circuit
6. c/o William D. Harris – Court Clerk Circuit Court of Fauquier County

In the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition, Questions Presented number 4. Statement of the Case paragraph 6. Appendix 143 thru 178. Conclusion. In this Petition for Rehearing content, Reasons for Granting the Rehearing paragraphs 1 and 3. These are, so far, the isolated arguments for the following Respondents:

1. Miller, Kearney & Geschickter, LLP
2. Lowry Jock Miller, Esquire
3. Carlin T. Hunter, As Administrator of the Estate of Dale Bruce Holbrook, et al.

4. c/o William D. Harris – Court Clerk Circuit Court of Fauquier County

In the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition, Statement of the Case paragraph 9. Appendix 179 thru 181. In this Petition for Rehearing content, Reasons for Granting the Rehearing paragraphs 1 and 3. These are, so far, the isolated arguments for the following Respondents:

1. c/o William D. Harris – Court Clerk Circuit Court of Fauquier County
2. Commonwealth of Virginia Fauquier County – Office of the Commonwealth's Attorney
3. H. Russell Potts, Jr. – Senator of Fauquier County
4. James Alan Cribb

I. The Court of Appeals' Interpretation of Rules Of Civil Procedure 1.140(a)(3) Conflicts with this Court's Interpretation of That Section

This Court previously interpreted RCP 1.140(a)(3) "If the court permits or requires an amended . . . pleading . . . , the pleading or statement shall be served within 10 days after notice of the court's action. (Petitioner served and filed within 10 days). Responses to the pleadings or statements shall be served within 10 days of service. . . . (Only Respondent, Pressure Cleaning Services, Inc., a Fla. corp. with their Insurance Carrier served and filed within 10 days)." *DOUBLE STANDARD issues apply* to Petitioner and Respondents in *Joseph J. LEHNER v. Patrick A. DURSO*, 816 So.2d 1171 (Fla. 4th DCA 2002). Parties must show (1) excusable neglect in failing to respond; (2) meritorious defenses; and (3) that the party acted with due diligence in seeking relief. The parties and their Insurance Carriers failure to demonstrate excusable neglect. Failure to plead or otherwise defend within time allotment. There are two different ways to enter Defaults. For Clerk of the Court to enter is filed entitled "Motion For Default". See

violation of Clerk from Rules of Civil Procedure Rule 1.540(a), Rule 1.500(a) and Rule 1.500(e) regarding clerical mistakes . . . arising from oversight or omission may be corrected *by the court AT ANY TIME on its own initiative* . . . . (It has been way over a year).

See *Metro Sporting Goods, Inc. v. Mutual Employees Trademart, Inc.*, 176 So. 2d 578 (Fla. 3rd DCA 1964). If any party refuses to obey an order made under Rules of Civil Procedure 1.28 to produce any document . . . the court may "(iii) . . . or rendering a judgment by default against the disobedient party;".

See *STATE ex rel. HARDIE v. COLEMAN*, 115 Fla. 119, 155 So. 129 (1934), 92 A.L.R. 988 (Fla. Supreme Court Decision) "Malfeasance as ground for suspension and removal of officer (Lowry Jock Miller, Esquire) (Alan Clayton Espy, Esquire) (Clerk of the Court), etc. . . . , refers to evil conduct or illegal deed, doing of that which one ought not to do, performance of act by officer in official capacity that is wholly illegal and wrongful" (Constitution Article 4, § 15). "Nonfeasance as ground for suspension and removal of officer (Clerk of the Court with reason it has been way over a year), refers to neglect or refusal, without sufficient excuse, to do that which was officer's legal duty to do" (Constitution Article 4, § 15).

CONCLUSION

For the foregoing reasons, the Petition For Rehearing should be Granted because decisions are entirely a question of laws and are freely reviewable. Also, in part, pursuant to Court Rules for Court clerical mistakes immediately to be corrected resulting cases already won by Petitioner. Petitioner prays that this Honorable Court will grant any other relief deemed just and proper.

Respectfully submitted,

DIANE L. HOLBROOK
Post Office Box 1512
Hobe Sound, Florida 33475-1512
Telephone: (772) 545-9793

CERTIFICATE OF PETITIONER

Pursuant to Rule 44 of this Court's Rules, Petitioner certifies that the issues presented in this Petition For Rehearing of the Petition For An Extraordinary Writ Of Mandamus and/or Prohibition concerns a substantial legal ground not previously presented to this Court. Petitioner further certifies that these issues, which raise important questions of constitutional jurisprudence and State of Florida County Court's jurisdiction, is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.

This the 25th day of May, 2004

_____

Diane L. Holbrook
Petitioner

APPENDIX

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

May 3, 2004

Ms. Diane L. Holbrook
PO Box 1512
Hobe Sound, FL 33475-1512

Re: In Re Diane L. Holbrook
No. 03-1242

Dear Ms. Holbrook:

The Court today entered the following order in the above entitled case:

The petition for a writ of mandamus and/or prohibition is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

December 1, 2003

* * *

Re: Diane L. Holbrook
v. Allied Van Lines, Inc.
No. 02-1613

Dear Ms. Holbrook:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

October 6, 2003

* * *

Re: Diane L. Holbrook
v. Allied Van Lines, Inc.
No. 02-1613

Dear Ms. Holbrook:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

October 1, 2001

* * *

Re: Diane L. Holbrook
v. Nationwide Mutual Insurance Company
No. 01-31

Dear Ms. Holbrook:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

December 3, 2001

* * *

Re: Diane L. Holbrook
v. Nationwide Mutual Insurance Company
No. 01-31

Dear Ms. Holbrook:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

WAIVER

Supreme Court of the United States

No. 03-1242

Diane L. Holbrook (Petitioner)	)	District Court of Appeal
	)	Fourth District of Florida
	)	(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of ~~certiorari~~ mandamus unless one is requested by the Court.

Please check one of the following boxes:

☐ Please enter my appearance as Counsel of Record for all respondents.

☒ **There are multiple respondents, and I do not represent all respondents.** Please enter my appearance as Counsel of Record for the following respondent(s):

District Court of Appeal, Fourth District of Florida

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature /s/ Louis F. Hubener

Date: **March 18, 2004**

(Type or print) Name Louis F. Hubener

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm Office of the Attorney General

Address PL01 – The Capitol

City & State Tallahassee, FL Zip 32399-1050

Phone (850) 414-3300

* * *

WAIVER

Supreme Court of the United States

No. 03-1242

☒ **There are multiple respondents, and I do not represent all respondents**. Please enter my appearance as Counsel of Record for the following respondent(s):

Eileen Buchmann

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature /s/ Daniel F. Dill

Date: **3/30/04**

(Type or print) Name Daniel F. Dill

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm Rogers, Coleman, Pendas, Knapp & Dill, P.A.

Address 34 East Pine Street

City & State Orlando, Florida Zip 32801

Phone (407) 849-6459

* * *

WAIVER

Supreme Court of the United States

No. 03-1242

☒ **There are multiple respondents, and I do not represent all respondents**. Please enter my appearance as Counsel of Record for the following respondent(s):

Pressure Cleaning Services, Inc.

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature /s/ Alan C. Espy

Date: **April 28, 2004**

(Type or print) Name Alan C. Espy

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm Alan C. Espy, Esq.

Alan C. Espy PA

Address 3300 PGA Blvd., Suite 630

City & State Palm Beach Gardens, FL Zip 33410

Phone 561/627-4775

* * *

FAX COVER PAGE

MR. MAILBOX
MAILING & BUSINESS CENTERS
8949 S.E. Bridge Road • Hobe Sound FL 33455
Phone: 772-546-7906 • Fax: 772-546-5329

If any portion of this transmission is unclear, please call (772) 546-7906.
Reply by FAX to: (772) 546-5329

DATE: 5-7-04 TIME: 1:42 p.m.

TO: Gilda Chavez

PHONE:

FAX: (305) 670-4846

FROM: Diane L. Holbrook

PHONE: (772) 545-9793

FAX:

SUBJECT: Indicted Moving Companies and Employees
Is Allied Van Lines Indicted??

KansasCity•com
THE KANSAS CITY STAR.

Posted on Tue, Mar. 04, 2003

Sixteen moving companies, 74 employees indicted in Miami

ADRIAN SAINZ
Associated Press

MIAMI – Sixteen interstate moving companies and 74 employees were indicted Tuesday on federal charges they lured hundreds of customers with low estimates, then inflated their prices and didn't deliver until the higher prices were paid.

The companies and individuals were charged in eight indictments accusing them of wire fraud, extortion, false billing, money laundering and conspiracy. The sixteen companies all were contacted by customers over the Internet and offered estimates without having seen the property, the U.S. Attorney's Office said. Most of the moves were interstate, but some were intrastate.

The quoted price was commonly doubled or tripled, but in one case a moving company went as high as seven times the original estimate, U.S. Attorney Marcos Jimenez said Tuesday.

"There were hundreds of victims and we're still counting," he said. "There are warehouses, plural, full of goods that have never been returned to these individuals."

The FBI made more than 45 arrests on Tuesday.

Additionally, four Florida circuit judges issued injunctions Tuesday that shut down 11 of the companies for allegedly violating the Florida Unfair and Deceptive Trade Practices Act, state Attorney General Charlie Crist said in a statement.

"These individuals struck at a quintessential freedom and value, which is the freedom to move about the country," Jimenez said.

http://www.kansascity.com/mld/kansascity/business/5314607.htm?1c